

Service Date: April 9, 1981

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application by)
THE MONTANA-DAKOTA UTILITIES)
COMPANY to increase rates for electric)
service in the State of Montana.)

DOCKET NO. 81.1.2
PHASE II

PROCEDURAL ORDER

Under the authority of ARM Section 38.2.2702, the Commission is entering this order setting out the proposed procedure to be followed in this Docket. This proposed order provides opportunity for all persons who intervened in Phase I to suggest changes in the proposed procedure.

It is HEREBY ORDERED:

1. The use of the term "parties" includes the Applicant, The Montana-Dakota Utilities Co. (MDU) and all intervenors.
2. All dates listed in this schedule are mailing dates. Parties must mail all material by the most expeditious method which is available at reasonable cost.
3. The following schedule shall apply to Docket No. 81.1.2, Phase II:
 - (a) March 31, 1981: Final day for service of direct testimony by MDU.
 - (b) April 21, 1981: Final day as a matter of right for discovery and data requests directed to MDU.

- (c) April 21, 1981: Final day for all parties to serve on all parties a list of witnesses, attorneys and others who are to be placed on the service list.
- (d) May 12, 1981: Final day for completion by MDU of all answers and responses to discovery and data requests directed to MDU by other parties.
- (e) June 2, 1981: Final day for completion and service upon MDU and other parties of the prepared testimony and exhibits of all parties except MDU; final day for filing by all parties of a position statement specifying the positions to be taken in the case.
- (f) June 23, 1981: Final day as a matter of right for discovery and data requests directed to all parties filing testimony on June 2, 1981.
- (g) July 14, 1981: Final day for completion of answers by all parties other than MDU to discovery and data requests made pursuant to 3(f).
- (h) August 4, 1981: Final day for service of rebuttal testimony by MDU and all other parties.

Final day for any party which intends to introduce as evidence, data requests or other discovery as part of its basic case, to notify all parties of the specific data requests or other discovery it plans to so introduce.

Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, (2 copies) each Commissioner, the Commission staff and all parties.

Final day for any party which intends to request official notice of data requests, other discovery or other information, to notify all parties of the specific data requests, other discovery or other information for which official notice will be requested.

Admissability of data requests or other discovery will be governed by the Montana Rules of Civil Procedure, the Montana Rules of Evidence and relevant case law. It is the Commission staff's position that these rules generally preclude a party from introducing its responses to another party's data requests or others' discovery procedures.

- (i) September 1, 1981: Opening day of hearing in Docket No. 81.1.2, Phase II.

Testimony will be received according to the following order of issues to be presented:

1. Cost of Service
2. Seasonal rates
3. Time-of-day rates
4. Interruptible rates
5. Declining block rates
6. Load management techniques
7. Lifeline rates

4. The period prior to April 21, 1981, is the time for discovery by parties seeking information from MDU. All parties must submit their discovery and data requests directly to MDU, with simultaneous copies to all parties and the Commission with certificate of service attached. MDU has the right to object within five (5) days of receipt of the request. The

objection and notice thereof shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling, or may schedule a hearing on the objections upon five business days notice. Rulings on objections will be made within five business days of such hearings. Failure to object promptly will be deemed acceptance of the request, and objections to the request will not be entertained later.

5. In the event any requesting party is dissatisfied with the response to any data or discovery request, such party must, within five (5) days after receipt of such response, serve in writing upon the Commission, and simultaneously upon all parties of record, its objections to such response. The Commission may dispose of such objections by prompt ruling, or may schedule a hearing on the objections upon five (5) business days notice. Within five business days of such hearing, the Commission will issue its order either sustaining or overruling the objections. If objections are sustained, a satisfactory response shall be furnished within the time established by the Commission. This provision applies to all responses contemplated by this Order.

6. In the period following April 21, 1981, further submission of discovery and data requests to MDU by any party must be made through the Commission, and will be disallowed unless the party making the request shows good cause why the request was not made before April 21, 1981. Responses will be made within ten (10) days unless MDU obtains an extension of time.

7. Failure by the Applicant to respond by May 12, 1981 to all requests made by April 21, 1981, may, in the discretion of the Commission,

result in delay of the hearing for a time equal to the time MDU is in default on such response.

8. The period from June 2, 1981, through June 23, 1981, is the period of time for MDU and other parties to seek discovery from parties other than MDU. Requests shall be served upon all parties. Any party receiving a request from MDU or another party has the right to object within five (5) days of receipt of a request, and the procedure outlined above will apply.

9. In the period following June 23, 1981, further submission of discovery and data requests by MDU and other parties must be made through the Commission, and will be disallowed unless the requesting party shows good cause why the request was not made prior to June 23, 1981. Responses to requests approved by the Commission after June 23, 1980, will be made within ten (10) days unless the party to whom the request is made obtains an extension from the Commission.

10. Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting him from introducing designated matters in evidence;
- (b) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof.

11. The Commission may, within five (5) business days notice, set a final Prehearing Conference prior to the hearing. At that prehearing conference there may be discussed, among other things, the feasibility of settle-

ment of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, order of witnesses, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

12. The term "discovery" as used in this Order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests."

It is the intention of the Commission that parties should first attempt to obtain desired information through data requests. If information so requested is not forthcoming, then a party should utilize the more formal discovery vehicles.

13. Discovery and data requests by intervenors and staff will be served on all parties. The purpose of this is to reduce the number of duplicate requests.

14. Unless otherwise agreed between individual parties, copies of answers to all discovery and data requests will be served only on parties specifically requesting them and on the Commission. In this connection the term "parties" includes the parties, their attorneys, and witnesses not located in the same town as the party. If any party wants material requested by any other party, it should so inform the party to whom the data request or discovery was directed.

15. Prepared direct, answer and rebuttal testimony will be adopted into the record without recitation by the witness. Objections to prefiled testimony and motions to strike will be made within seven days of receipt of the testimony by the objecting party's attorney.

The Commission contemplates a progressive narrowing of issues as testimony proceeds from direct to rebuttal. Introduction of new issues or significantly different data will be carefully scrutinized, and disallowed unless reasonably related to the testimony prefled in conformance with this order.

16. The rules of evidence applicable in the District Courts of the State of Montana at the time of the hearings in this Docket will be used at the hearings.

17. Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony; in addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record without reading, as in the case of other prepared written testimony.

18. Two copies of prepared written testimony shall be given to the court reporter.

19. All exhibits and prepared written testimony shall be marked for identification in advance. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

20. When cross-examination is based on a document not previously filed with the Commission, either copies of the document will be made available at that time to the Commission, or good cause will be shown why copies are not available.

21. Objections by any party to any procedural matter connected with this Docket, including objection to any notice given, shall be raised on written or oral motion at the earliest possible time in order that the Commission may make any necessary correction.

22. All parties shall serve the noted number of copies of pleadings on the people listed on the most current service list in the files of the Commission.

23. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. If oral argument is requested, and the request is granted, the party requesting oral argument shall notice the same for hearing before the Commission.

Should the dates established in this order be changed, an amended procedural order will be issued. The Commission may, at any time prior to the hearings, suspend the schedule established herein in order to permit additional staff data requests and to allow for the filing of staff testimony. If this schedule is suspended, an amended procedural order will be issued fixing a new schedule.

24. The Commission has adopted several measures intended to facilitate public participation in this Docket:


(a) The Position Statements referred to in section 3(e) are intended to be short, clear statements of each party's basic contentions, and should be written with the general public in mind.

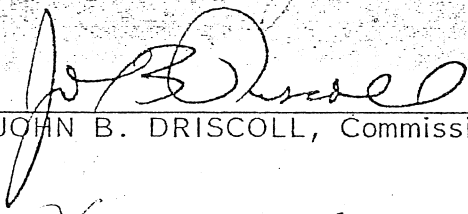
(b) Prefiled testimony of any individual should be accompanied by a short, clear summary of that testimony. This summary should also be written with the general public in mind, and is not intended to become part of the record. MDU must file summaries on or before March 31, 1981.

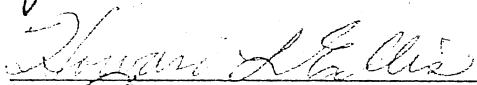
25. Nothing in this Order shall be construed to limit the legally established right of staff to inspect the books and accounts of MDU at any time.

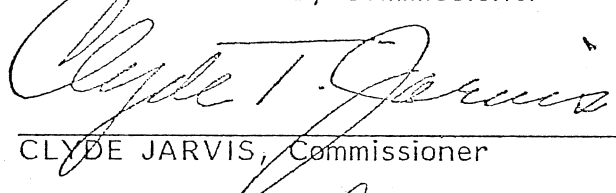
DONE AND DATED THIS 6th day of April 1981, by a vote of 5-0.

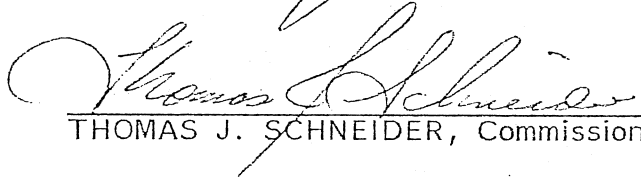
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.


GORDON E. BOLLINGER, Chairman



JOHN B. DRISCOLL, Commissioner


HOWARD L. ELLIS, Commissioner


CLYDE JARVIS, Commissioner


THOMAS J. SCHNEIDER, Commissioner

ATTEST:


Madeline L. Cottrill
Secretary

(SEAL)